IN RE: PETITION FOR VARIANCE	*	BEFORE THE OFFICE
(1129 Maple Avenue)		
15th Election District	*	OF ADMINISTRATIVE
6th Council District		
Michael J. Kasputis	*	HEARINGS FOR
Legal Owner		
Carpentry Unlimited Homes, Inc.	*	BALTIMORE COUNTY
Contract Purchaser		
Petitioners	*	**CASE NO. 2016-0193-A**

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OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Variance on behalf of Michael J. Kasputis, legal owner of the subject property and Carpentry Unlimited Homes, Inc., contract purchaser ("Petitioners"). The Petitioners are requesting Variance relief from the Baltimore County Zoning Regulations (B.C.Z.R.) § 1A04.3.B.2.b to permit a front yard setback of 50 ft. from the center of a street or road and side yard setbacks of 10 ft. and 45 ft. in lieu of the required 75 ft., 50 ft., and 50 ft. respectively for a new dwelling . A site plan was marked as Petitioners' Exhibit 1.

Mark Fuchslager and David Billingsley appeared in support of the Petition. The Petition was advertised and posted as required by the B.C.Z.R. No Protestants or interested citizens attended the hearing. Zoning Advisory Committee (ZAC) comments were submitted by the Department of Planning (DOP) and Department of Environmental Protection and Sustainability (DEPS), and conditions will be included in the Order below to address these comments.

The subject property is approximately 15,000 square feet and is zoned DR 5.5. The property is unimproved and is comprised of four (4) individual lots, each 25 ft. x 150 ft. The lots were created by the Plat of Cedar Beach, recorded in 1925. Petitioners propose to construct a single family dwelling (SFD) on the property, but variance relief is needed to do so.

A variance request involves a two-step process, summarized as follows:

> (1) It must be shown the property is unique in a manner which makes it unlike surrounding properties, and that uniqueness or peculiarity must necessitate variance relief; and
> (2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

Cromwell v. Ward, 102 Md. App. 691 (1995).

Petitioners have met this test. The lots were created long ago, before the adoption of the B.C.Z.R. As such the property is unique. If the Regulations were strictly interpreted, Petitioners would experience a practical difficulty because they would be unable to construct a single family dwelling on the lots. Finally, I find that the variance can be granted in harmony with the spirit and intent of the B.C.Z.R., and in such manner as to grant relief without injury to the public health, safety, and general welfare. This is demonstrated by the lack of Baltimore County and/or community opposition.

THEREFORE, IT IS ORDERED, this **26th** day of April**, 2016**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance seeking relief from the Baltimore County Zoning Regulations ("B.C.Z.R.") § 1A04.3.B.2.b to permit a front yard setback of 50 ft. from the center of a street or road and side yard setbacks of 10 ft. and 45 ft. in lieu of the required 75 ft., 50 ft., and 50 ft. respectively for a new dwelling, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioners may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioners are hereby made aware that proceeding at this time is at their own risk until 30 days from the date hereof, during which time an appeal can be filed by any party. If for whatever reason this Order is reversed, Petitioners would be required to return the subject property to its original condition.

2. Prior to issuance of permits Petitioners must comply with the Critical Area Regulations.

3. Petitioners must comply with the ZAC comment submitted by the DOP, a copy of which is attached hereto.

Any appeal of this decision must be made within thirty (30) days of the date of this Order.

_____Signed_____
JOHN E. BEVERUNGEN
Administrative Law Judge for
Baltimore County

JEB/sln